JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

LEONIDAS RALPH MECHAM
Secretary

June 14, 2002

Honorable Paul Volcker
The National Commission
on the Public Service
The Brookings Institution
1775 Massachusetts Ave., N.W.
Washington, D.C. 20036-2188

Dear Mr. Volcker:

I am writing, as Secretary to the Judicial Conference of the United States, in response to the Commission's request for comments on the issues it plans to study. My remarks are confined to what I believe are among the most pressing issues facing the federal judiciary today–the problems of pay erosion, pay comparability, and pay compression.

The Judicial Conference strongly believes that equitable compensation for all public servants, including high-ranking government officials such as judges, is important for the long-term good of our nation. As discussed in detail below, the following factors support the need for salary improvements for high-level officials in all three branches of government: (1) the purchasing power of salaries has declined sharply; (2) salaries in other sectors of the economy have increased substantially; (3) the Employment Cost Index and quadrennial salary review mechanisms provided by the Ethics Reform Act of 1989 have not been allowed to operate as intended; and (4) as a result of the limits placed on salaries, pay compression and pay inversion are having a corrosive effect on the federal salary scale.

Introduction

The ability of the federal judiciary to provide the highest-quality service to all litigants is a matter of great importance, not only to the legal community, but also to the public at large. The United States enjoys a 200 year history of judicial excellence, and a judiciary which is the envy of the world. The increasing discontent with judicial salary levels comes at a time in the nation's history when the federal bench faces the enormous challenge of providing prompt, fair resolution of increasingly complex disputes, many in developing areas of the law. Rapid technological changes, occurring in everything from e-commerce to genetic research, are revolutionizing every aspect of Americans' lives. The law must keep pace with every change that society undergoes. Judges are also challenged by large numbers of more routine but still demanding cases, including pro se cases, that require fair and speedy resolution. To meet these challenges, the courts must be able to attract and retain judges of great ability and broad experience.

At the time that the federal judiciary must attract and retain the best judges, trends in the legal community are making that increasingly difficult. Law firms are also finding it necessary to attract and retain the best legal talent, in order to meet the increasingly sophisticated needs of their clients, and compensation for private lawyers (even inexperienced lawyers) has surged upward. In addition, the growth in private dispute resolution services, and the consequent need for sophisticated arbitrators and mediators, are creating strong financial incentives for judges to leave the bench.

At the same time the federal judiciary's general workforce is aging, and we must be concerned about the third branch's ability to remain competitive with the state courts and the private sector in the "war for talent." In the next five years, the judiciary faces the prospect of losing a significant number of experienced, high-level officials to retirement. We need to be able to attract and retain talented employees. Complicating the picture is the current government-wide salary cap, which has caused severe salary compression.

Most public discussion of the federal courts focuses on their function: the legal processes they follow, their jurisdiction, and the rights of litigants who come before them. These are all legitimate concerns. It is also appropriate to consider as well the judiciary's human dimension. The central figures in our judicial system are the judges. It is in the public interest to ensure that these judges are of the highest caliber, free from the distractions of personal economic pressure, and independent of outside influence. There can be little doubt that present salary levels for federal judges are counterproductive to these aims. The Judicial Conference urges you to examine this issue. We believe you will see a clear need for immediate action.

Compensation of Judicial Officers

The lack of adequate compensation for federal judges has become a serious issue. Awareness of the judiciary's worsening financial position, absolutely and in comparison with other sectors of society, has gradually become a dominant source of dissatisfaction among judges. To understand the depth of the concern of federal judges about their being under-compensated requires a review of some recent history.

In 1989, Congress passed and President George Bush signed into law the Ethics Reform Act of 1989. This legislation responded to the recommendation of several Quadrennial Salary Commissions and enacted a catch-up pay raise of approximately 33 percent over two years. The Ethics Reform Act also revised the method for calculation of periodic adjustments in the pay of justices, judges and other high-level federal officials (including the Vice President, Speaker of the House, majority and minority leaders of Congress, rank-and-file Members of Congress, and Cabinet and sub-Cabinet officials). Congress and President Bush intended that the Ethics Reform Act would provide top government officials with regular increases that would alleviate the future need for major "catch up" adjustments of the type enacted in 1989.

The Failed Ethics Reform Act

Regrettably, this intent has not been realized. Judges (as well as other high-level government officials) have received only four cost-of-living salary adjustments since January 1993. What this means is that since 1993, the annual cost-of-living salary adjustments for these officials have averaged only about one percent. That is far below the average General Schedule raise over the same time and even less than federal retirees' cost-of-living adjustments. As a result, judges' purchasing power has declined by more than 13 percent. What this means is that in 1992 dollars (because the January 1993 judges' pay adjustment was based upon 1992 data), the value of a circuit judge's salary has fallen from $159,100 to $138,417, the value of a district judge's salary has fallen from $150,000 to $130,500, and the value of a bankruptcy or magistrate judge's salary has fallen from $138,000 to $120,060.

The Ethics Reform Act also provided that a Citizens' Commission on Public Service and Compensation (which was to succeed the former Quadrennial Salary Commission) should convene every four years to consider and make recommendations on the adequacy of the compensation of our nation's highest officials. Unfortunately, the Citizens' Commission process has not worked. In the twelve years since the enactment of that legislation, no money has been appropriated for the Commission, and Congress has never appointed its members. Accordingly, the purchasing power of federal judges, has been allowed to decline while the compensation of attorneys in private practice have skyrocketed.

To rectify this situation, we urge you to recommend that the President and the Congress establish a new quadrennial salary review process. Such a review of the salaries of top officials is long overdue. Your National Commission on the Public Service can, in effect, function as a Quadrennial Salary Commission this year to propose the many necessary pay reforms which have accumulated since 1989 when the last such Commission filed its report. Thus, Congress and the President would not be required to defer action on salary reform until legislation revitalizing the former Quadrennial Salary Commission is enacted (which could take several years).

2001 Report on Federal Judges' Compensation

To further aid you in your deliberations as they bear on the judiciary, I am providing you with a report entitled, *Federal Judicial Pay Erosion: A Report on the Need for Reform.* This report was recently prepared by the Federal Bar Association and the American Bar Association. It examines the current level of judicial compensation from several different perspectives. There is no need for me to repeat the voluminous data available to you in the report, but I would like to emphasize a few important points. First, and perhaps most importantly, it is clear from the report that judicial pay is a major source of dissatisfaction and discontent among our federal judges. Except for occasional cost-of-living salary adjustments–not every year–judges have not had a real salary increase since 1991.

Second, the report carefully documents the present inadequacy of judicial salaries as they compare to the historical benchmark salary levels of 30 years ago and even as they compare to the levels approved by former President Bush in 1989. Also, as the report documents, judicial

salaries are not competitive with those for comparable positions in the legal profession and in the private sector generally, and they have lagged far behind the rates of advance most American workers (including rank-and-file federal employees) have enjoyed over the past 30 years.

Finally, the report states that while the real value of judicial salaries has declined, the workload burden upon the judiciary has not. In the past three decades, a U.S. district judge's average caseload increased by 55.2 percent. The increase is nearly 200 percent for judges on the U.S. courts of appeals.

Salary Inversion

The judiciary is confronting another serious problem–salary inversion. The bankruptcy and magistrate judge salary (which is 92 percent of the district judge salary) has dropped below the Executive Schedule Level III salary (which is the ceiling for many career government executives). As a result, it is not uncommon for locality-adjusted pay of circuit executives, court unit executives, and other high-level officials to exceed the salaries of bankruptcy and magistrate judges. This is unfair and demoralizing. It is also corrosive to the judiciary as an institution.

There is yet another wrinkle to the salary inversion issue. At present, federal employees in Alaska, Hawaii, and the territories (Guam, the Northern Mariana Islands, the Virgin Islands, and Puerto Rico) receive non-foreign cost-of-living allowances equal to 25 percent of their basic pay. Section 461 of title 28, United States Code, does not presently authorize the payment to judges of nonforeign COLAs. In the absence of specific statutory authorization, judges may not receive this additional form of compensation. As a result of the payment of nonforeign COLAs, the annual compensation of some officials in these areas exceeds the salary of a district judge (which is fixed at $150,000), as well as a circuit judge (which is fixed at $159,100). For example, the nonforeign COLA adjusted salary of the United States attorney and the federal public defender for Hawaii is $162,500.[1]

Increasing Difficulty in Retaining Judges

The results of this are predictable. Resignations from the federal bench once were rare. Now such resignations are increasing. The table below shows the increasing rate of departures that has grown in tandem with the financial pressure of being an Article III judge. The absolute numbers are not large. But the facts are that a substantial proportion of these separations were related to compensation. That the numbers seem to be on the rise, and that a number of the resigning judges have resigned were eligible for (or were in) senior status (when judges traditionally continue to give their energies to judicial service long after they retire from active service) or were younger, active judges (without entitlement to an immediate or deferred annuity) gives rise to particular concern. For judges to emulate the pattern of executive branch federal

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[1] This is based upon the following: basic salary of $130,000 (Executive Schedule Level IV) + a nonforeign cost-of-living allowance in the amount of $32,500 (25 percent of $130,000) = $162,500.

service as a mere steppingstone to reentry into private sector law firm practice is inconsistent with the traditional lifetime calling of federal judicial service.

Time Period	Number of Departures
1958 to 1969	3
1970 to 1979	22
1980 to 1989	41
1990 to 1999	55
2000 to May 30, 2002	18

In 2001, the Senate confirmed 28 new federal judges for appointment to the bench. Meanwhile, the federal courts lost six judges (a number equal to approximately 20 percent of those being appointed). Many of those judges left for financial reasons. In January 2002 alone, four additional federal judges resigned or announced their intention to resign because of financial considerations and other pressures.

Recently, some judges who have left the federal bench agreed to talk about their reasons for doing so. Judge Joe Kendall (N.D. Tex.), who resigned in January 2002 after nine years of service to enter private practice, stated that "I need to do what I'm doing," because "I have financial concerns." Judge Kendall has two children who will soon be college-bound, and a third child with special needs. "Insecure About their Future: Why Some Judges Leave the Bench," *The Third Branch*, Feb. 2002.

Judge Kendall is not alone. Judge Alfred J. Lechner Jr. (D.N.J.), who resigned in October 2001 to reenter private practice, stated that with three children in college, his tuition bills were considerably more than his take-home pay as a district judge. *Id.* Despite having served on the federal bench for 15 years, at the time he resigned Judge Lechner had no entitlement to either an immediate or deferred annuity.

Former Chief Judge Edward Davis (S.D. Fla.), who retired from judicial office in July 2000 after 20 years of judicial service to enter private practice, stating that a better salary would guarantee the long-term care of a handicapped family member. Judge Davis observed that "If I had been sure I'd have enough money to care for the child, I would not have left the bench, but I couldn't feel secure about the future. We'd been assured we would receive cost-of-living increases after the pay raise in 1989," he said. "Then Congress said no to the promised COLAs." [*Id.*] Judge Davis also stated that "[s]omething is horribly wrong when my law clerks can leave me, after serving two years, and go to New York and make more money than I made as a judge." "Lagging Judicial Pay Gives Some People Second Thoughts About Careers on the Bench," *The Washington Post*, Mar. 11, 2001. Judge Davis is now associated with the same law firm as former Chief Judge Joseph Hatchett (11th Cir.), who also "retired" to private practice in May 1999 after having served for 20 years.

Judge Michael Burrage (E.D. Okla.), who resigned in March 2001 after six years of service (without entitlement to immediate or deferred annuity) to return to private practice, stated that "Congress kept expanding federal jurisdiction without increasing our courts' resources. When we were prevented from earning honoraria after the Ethics Reform Act, and still didn't get the promised annual COLAs, well, it was time to leave." [*See The Third Branch*, Feb. 2002] Judge Burrage opined that the pay gap will shrink the applicant pool to "people who are filthy rich and for whom salary makes no difference. It is going to cut out a segment of very capable people." "Lagging Judicial Pay Gives Some People Second Thoughts About Careers on the Bench".

Judge Carlos Moreno (C.D. Calif.) resigned in October 2001 after three years of federal judicial service to accept an appointment to the California Supreme Court. He stated, "[m]y leaving the federal court had nothing to do with dissatisfaction, unless you mean the overwhelming workload and the lack of pay." Judge Moreno noted that as a California Supreme Court justice, he earns more than he did as a federal district judge and that his benefits are better, with full medical and dental coverage. *Id.*

Judge James Ideman (C.D. Cal.) "retired" from the federal bench in September 1998, after having served for 14 years, to return to the state bench in California (where he had been a judge for over 5 years before becoming a federal judge). At the time, Judge Ideman stated that he retired because he felt "'a sense of betrayal' by Congress, which has denied federal judges regular cost of living increases, allowing inflation to eat away at [his] . . . salary." *Los Angles Daily Journal*, June 21, 1999. While foregoing senior status, Judge Ideman not only receives a federal pension (equivalent to the district judge salary at the time of his retirement) but also collecting a state pension, as well as $400 for each day he now sits on assignment plus expenses.

Former Judge Lisa Hill Fenning (Bankr. C.D. Cal.) left the bankruptcy bench in 1999 citing financial reasons. "I have a daughter at Yale, two high schoolers and one middle schooler." The federal bankruptcy judge salary is $30,000 to $40,000 less than what a first-year associate is making at a large firm. I was facing financial strain." *Los Angeles Daily Journal*, Apr. 9, 2001.

Similarly, former Judge Charles Legge (N.D. Cal.) "retired" in June 2001, after having served for 17 years, to JAMS (a private firm comprised of former federal and state judges, that provides dispute resolution services). Judge Legge stated that he retired for workload and compensation reasons. Referring to his family, Judge Legge stated that he wants to "make a financial contribution to their lives." At the same time that Judge Legge left the bench to take the position with JAMS, he was accompanied by former Magistrate Judge Edward Infante (N.D. Cal.). According to experts, Judge Infante has "mediated more class action settlements than any human being in the country." "JAMS Raids Fuel Brain Drain Fears," *The Recorder*, Apr. 26, 2001.

In a letter dated June 6, 2002, to Chief Judge Deanell Reece Tacha (10th Cir.) (who chairs the Judicial Conference Committee on the Judicial Branch), former Magistrate Judge Carol Heckman (W.D.N.Y.) explained her reasons for leaving the federal bench:

> My decision to leave the bench to return to private practice was a difficult one. One of the reasons for my decision was my frustration with the judicial compensation system. When I took the job as a magistrate judge, little did I know that I would not be receiving automatic cost of living increases as I had when I served as an assistant U.S. Attorney, a trial attorney with the Department of Justice and a law clerk for the Chief Judge for the Western District of New York.
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> The problem of pay compression and failure to keep pace with inflation are very real problems. At the end of my eight-year term as a magistrate judge, I had two children in high school and my ex-spouse had unexpected[ly] died. Even in the relatively modest community of Buffalo, New York, I knew that the top salaries in private law firms in Buffalo far exceeded those of the judiciary, and that my skills were a highly sought after commodity. To me, the decision with which I was faced was clear. Much as I loved public service and being a judge, the practicalities of the situation won out. Although I am happily working as a partner in a major upstate New York law firm, I regret that the judicial compensation system forces individuals like me to make these tough choices.

Of the 73 Article III judges who have left the federal bench since January 1990, 61 (nearly 84 percent) were lured to other jobs. Of these 73, 47 (nearly 64 percent) entered the private practice of law (including private dispute resolution firms). Nine judges accepted appointments to other positions in government (federal, state, and local) or quasi-governmental entities. Four judges took positions in the field of education (including teaching at universities). One judge accepted an appointment to the International War Crimes Tribunal at the Hague.

Judges recognize that their appointments carry with them a certain amount of sacrifice in exchange for a position of great importance. Still, as Director of the Administrative Office, it is disquieting to hear from judges who are single parents and are barely able to afford the cost of college, as well as from judges who have had to sell their homes or leverage the equity in their homes to cover the cost of college tuition.

It is my sense that Magistrate Judge Thomas Coffin (D. Or.), in a December 7, 2000, letter to me best expresses the frustration that judges collectively feel over the compensation issue:

> Prior to beginning service on the bench in early 1992, I had been an Assistant U.S. Attorney for 21 years. During that period, my compensation was moderately improved each year, enough so that I was always able to meet the basic needs of my growing family (seven children).
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> My nine years on the bench has been a completely different economic experience. I earn far less now in real dollars than I did when first appointed. I am compelled to regularly borrow from my retirement account to meet my family's needs. My medical and dental benefits have also been reduced.

> In nine years, I have received a total salary increase of $7000. That is less than $800/year in paper money, and is far below the cost of living measures. Each year, my family falls further behind.
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> What institution other than the United States government penalizes its employees in this manner? Although I did not enter public service with any thought of becoming wealthy, I did enter with the hope that I would be treated fairly. As the great Justice Oliver Wendell Holmes once observed, even a dog knows the difference between getting kicked and getting tripped over.

In a letter dated June 6, 2002, to Judge Tacha, Magistrate Judge Ann Vitunac opens a small window into the thoughts and feelings of federal judges regarding the inadequacy of their compensation:

> We in Southern Florida have been forewarned that our homeowners' insurance will increase by fifty percent this year. College expenses have increased by ten percent almost each year for the last five years. The high school attended by my children has doubled its tuition in the past eight years. Our federal health insurance has substantially increased. We have already sold one home for a less expensive home in the hopes of reducing our financial obligations. It is increasingly stressful following Congress' budget process in the newspaper each year with crossed fingers wondering whether or not we will get a meager cost of living increase to help cover mounting bills.
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> According to our clerk of Court, the number of Magistrate Judge job applications has definitely dropped. Since the nature of the job and the nature of our court has not changed substantially over the past fifteen years, it would seem that the only variable is the economy. Lawyers in South Florida are earning a substantial amount of money. A recent member of the Magistrate Judge Selection Committee here told me that applicants she reviewed for the last Magistrate Judge position opening were either over fifty-five and very wealthy, or very young with mostly government service. The pool of applicants did not include those between forty and fifty-five in private practice.
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> Being a Magistrate Judge is a lonely job. There are limitations on socializing. There are limitations on speech. There are limitations on politics. There are no perks, no bonuses, only salary.

Similarly, Chief Magistrate Judge Linnea Johnson (S.D. Fla.) has written to Judge Tacha stating that "[o]ur top U.S. Attorneys and Clerk's Office personal salaries are not that far from our own. This disparity causes me to re-examine whether I should continue to serve the United States Courts."

Some might argue that the nation cannot afford to pay improved judicial salaries at a time when it is facing a potential budget deficit; however, the real cost of not granting adequate salaries

to our federal judges must be calculated, not in today's dollars, but by the drain on our judiciary that will be caused by the loss of qualified, seasoned judges. Judges are not fungible. A new judge cannot be expected to be as efficient as an experienced judge. The early departure of a single federal judge, therefore, creates a gap (thereby causing backlogs in the already crowded dockets) in the system that cannot be closed for years.

Barriers to Attracting Quality Judicial Officers

It is difficult to document in any systematic way the extent to which able lawyers have refused to allow their names to be considered for appointment to the federal bench because of the level of compensation. Still, it does appear that such refusals have occurred in all sectors of the country.

In a recent interview, White House Counsel Alberto Gonzales stated that,

> We are aware of both young lawyers with family obligations and established prominent lawyers with substantial investment in their practice and community who feel that they cannot afford to go on the federal bench. The Judiciary suffers when it cannot attract top tier lawyers for whatever reason. "An Interview with White House Counsel Alberto R. Gonzales," *The Third Branch*, May 2002.

In a March 2000 Senate Governmental Affairs Subcommittee hearing, Senator Richard Durbin (D-Illinois) recounted the difficulties a judicial selection panel had confronted in attracting a pool of highly qualified candidates for a vacancy on the U.S. District Court for the Northern District of Illinois. "Managing Human Capital in the Twenty-first Century," hearing before the Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia, United States Senate, March 9, 2000.

We are aware of similar problems in filling vacancies on at least one Court of Appeals[2] and on the U.S. District Courts for the Southern District of Florida and the Southern District of Alabama. Other courts have been affected as well. This suggests that high caliber lawyers are aware of and too often deterred by the sacrifices required by federal service today.

Chief Judge Roger Vinson (N.D. Fla.) recently observed that "[t]here was a time when I always recommended a federal judgeship to someone considering it, without any hesitation or qualification. Now, however, I hedge a lot – especially for those who are not independently wealthy. The compensation is simply not comparable to the private sector, and the prospects are that it will get worse instead of better."

The judges presently in the federal system are individuals with extraordinary talent. Their collective experiences cover a broad range of the law, in both the public and private sectors. We enjoy a pluralism in the judiciary that is enriched by diverse backgrounds in race, gender, and

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[2] We understand that four highly qualified lawyers declined to leave the practice of law and one lawyer an academic position for a court of appeals vacancy.

religion, as well as prior careers and expertise that cover a broad range of experiences -- from state government work to other types of public service, and from academia to private practice.

Our federal courts are unique in that they are not dominated by any monolithic type or background. The courts are not dominated by judges who have accumulated vast wealth through law practice. They are not dominated by former state judges. They are not dominated by ideologues. Rather, the courts are composed of some judges who have had extraordinary careers in the public sector (such as federal magistrate and bankruptcy judges) or with small firms and some exceptionally capable judges who were lawyers from larger firms, as well as some with state judicial experience. There are a few who were born into wealth and others who have accumulated relatively few assets.

Still, as Chief Justice William Rehnquist observed in his 2000 year-end statement:

> [I]n order to continue to provide the nation a capable and effective judicial system we must be able to attract and retain experienced men and women of quality and diversity to perform a demanding position in the public service. The fact is that those lawyers who are qualified to serve as federal judges have opportunities to earn far more in private law practice or business than as judges.
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> In order to continue to attract highly qualified and diverse federal judges—judges whom we ask and expect to remain for life—we must provide them adequate compensation. To paraphrase a statement made by George Mason at the Constitutional Convention, I fear that otherwise the question will be not who is most fit to be chosen, but who is most willing to serve. We cannot afford a Judiciary made up primarily of the wealthy.

In his 2001 year-end statement the Chief Justice repeated his request for salary relief for our nation's judges, stating that "[t]he combination of inadequate pay and a drawn-out and uncertain confirmation process is a handicap to judicial recruitment across the board, but it most significantly restricts the universe of lawyers in private practice who are willing to be nominated for a federal judgeship."

Compensation of Judicial Staff

A great deal has been written in recent years about succession planning. The Senate Governmental Affairs Committee and its Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia have held a number of thoughtful hearings on the need for executive branch agencies to ensure that they retain as many highly capable, experienced and accomplished executives as possible, and develop and have in place the necessary talent to succeed those who retire. Like the executive branch, the judiciary is concerned about its aging work force, as well as about developing its next generation of top executives. This includes circuit and district court executives, clerks of court, federal public defenders and chief probation and pretrial services officers. Over 300, or 56 percent, of our top executives will be retirement eligible by June 2007. This includes circuit and district court executives (47 percent),

clerks of court (49 percent), federal public defenders (40 percent), and an astonishing 85 percent of chief probation and pretrial services officers.

The drain of knowledge due to the departure of our current generation of highly capable, experienced, and accomplished executives may adversely affect the judiciary's ability to provide the outstanding service that judges, the bar, and the public deserve and have come to expect. In order to develop and have in place the necessary talent to succeed those who retire, the judiciary needs the necessary tools to attract experienced and accomplished executives. As the judiciary prepares to meet this challenge, it is hamstrung by a widening pay gap with the private sector and not-for-profit organizations, an antiquated federal benefits package which lags well behind the private sector and state courts, and severe pay compression.

The growing pay gap with the private sector, as well as salary compression, are undermining the federal judiciary's ability to compete with state courts, law firms, universities, and non-profit organizations in the "war for talent." The compensation gap with private industry and large nonprofit organizations was well documented in a 1999 Congressional Budget Office (CBO) study. *CBO Memorandum: Comparing the Pay and Benefits of Federal and Nonfederal Executives* (1999). The CBO reported that the total compensation of private-sector executives is 40 to 50 percent higher than that of federal executives. A similar gap exists relative to top officials at large non-profit organizations.

The tightening pay compression at the top of the federal salary structure is another serious problem. After being frozen five of the last nine years, the government-wide Executive Schedule level III pay ceiling (for basic and locality-adjusted pay) has reached well down through the ranks of the judiciary's top executives. As a result, our top court executives have little incentive to remain on the job. The narrowing of differentials between top executives, their deputies and senior supervisors does not adequately compensate them for higher levels of leadership and scope of responsibility. Pay compression is creating a situation where the difference between executive and non-executive pay is so small that the financial incentive for talented deputies and supervisors to apply for positions of greater responsibility could disappear. The President and Congress should broaden differentials to correct this compression dilemma.

There is another wrinkle. Since January 1993, the average cost-of-living adjustment for retirees' annuities has exceeded that for executives who remain on the job. This creates a strong incentive to retire early, if not immediately.

The pay compression problem was widely discussed in the May 24, 1999, hearing before the House Subcommittee on Government Management, Information and Technology of the House Government Reform Committee on the need to increase the Presidential salary. At the time, a number of witnesses opined that the artificially low Presidential salary (which was then fixed at $200,000, but has now been doubled) threatened to cause compression in salaries throughout the federal government. These witnesses observed how this phenomenon has, in the past, caused serious problems in recruiting and retaining talented and experienced individuals in federal public service. Thomas "Mack" McLarty III, President Bill Clinton's former Chief of Staff, testified:

> I believe very strongly that the best government is one that attracts talented people from all walks of life. You should not have to be independently wealthy to serve in government. But we have raised the costs of government service dramatically.
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> In short, career civil servants, our men and women in uniform, and the people who serve in appointed office are real American families with mortgages, tuition, and all of the other challenges of modern life. Private sector salaries are increasing, government salaries are not. We should not force people to choose between their families and their country. "Adjusting the President's Salary," hearing before the House Government Reform Committee Subcommittee on Government Management, United States House of Representatives, May 24, 1999, available in 1999 WL 16948293.

Donald Simon, the Acting President of Common Cause, testified that salary compression has in the past "caused serious problems in recruiting and retaining talented and experienced individuals in federal public service." "Adjusting the President's Salary," available in 1999 WL 16948280. Similarly, Ken Duberstein, President Reagan's Chief of Staff, stated, "I am concerned as well with the pay compression for Senior Executive Service personnel as well as the Vice President, Chief Justice and others." "Adjusting the President's Salary," available in 1999 WL 329898.

Following that hearing, Congress promptly enacted legislation doubling the Presidential salary for the first time in 32 years. Unfortunately, Congress did not act to fix the problem of salary compression. As a result, the problem of pay compression continues to seriously threaten the judiciary and the political branches.

Senator John Warner (R-Virginia) and Representative Tom Davis (R-Virginia) have introduced legislation in the 107th Congress which would address the pay compression problem. If enacted, S. 1129 and H.R. 1824 would lift the current pay caps on the salaries of executives in the executive and judicial branches. Regrettably, this legislation has gained little traction and appears unlikely to be enacted this session.

The federal judiciary faces serious challenges in the years ahead. The pay gap, pay compression, and impending retirements depict a serious situation for the future of the third branch. Improved compensation would enable the judiciary to attract and retain a highly capable, experienced cadre of executives and conduct appropriate succession planning for executive positions.

Conclusion

In private industry, employers recognize their own self interest and find ways to attract and retain good employees. Government should do the same. Good government demands that the salaries of judges and judicial executives be raised and maintained in proportion to increases in the cost of living.

On behalf of the Judicial Conference, I urge you to recommend to the President and the Congress a remedy to the judges' and judicial executives' compensation problem. I appreciate this opportunity to express the views of the third branch. I would be pleased to meet with you if you believe it would be helpful.

Sincerely,

Leonidas Ralph Mecham
Secretary

Enclosure

cc: Honorable Deanell Reece Tacha
Honorable Richard S. Arnold
Honorable Robert A. Katzmann